

FIRST REGULAR SESSION

HOUSE BILL NO. 1096

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COOPER (158) (Sponsor), WRIGHT AND LIPKE (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

2627L.01I

AN ACT

To amend chapter 379, RSMo, by adding thereto eight new sections relating to the establishment of the Missouri catastrophe fund.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 379, RSMo, is amended by adding thereto eight new sections, to be
2 known as sections 379.955, 379.957, 379.959, 379.961, 379.963, 379.965, 379.967, and 379.969,
3 to read as follows:

379.955. As used in sections 379.955 to 379.969, unless otherwise indicated, the
2 **following terms mean:**

3 (1) "Actuarially indicated", with respect to premiums paid by insurers for
4 reimbursement provided by the fund, an amount determined according to principles of
5 actuarial science to be adequate, but not excessive, in the aggregate, to pay current and
6 future obligations and expenses of the fund, including additional amounts if needed to pay
7 debt service on revenue bonds issued under section 379.963 and to provide required debt
8 service coverage in excess of the amounts required to pay actual debt service on revenue
9 bonds issued under section 379.963, and determined according to principles of actuarial
10 science to reflect each insurer's relative exposure to losses from covered events;

11 (2) "Covered event":

12 (a) All earthquakes, regardless of quantity, that occur in a calendar year, that are
13 declared to be earthquakes by the United States Geological Survey, which cause insured
14 losses in this state; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (b) All ice storms, regardless of quantity, that occur in a calendar year, that cause
16 insured losses in this state;

17 (3) "Covered policy", any insurance policy covering residential property in this
18 state, including, but not limited to, any homeowner's, mobile home owner's, farm owner's,
19 condominium association, condominium unit owner's, tenant's, or apartment building
20 policy, or any other policy covering a residential structure or its contents issued by any
21 authorized insurer, including any basic property insurance policy issued under sections
22 379.810 to 379.880. "Covered policy" does not include any policy that specifically excludes
23 coverage for covered losses;

24 (4) "Director", the director of the department of insurance, financial and
25 professional regulation, or his or her designee;

26 (5) "Fund", the Missouri catastrophe fund created under section 379.957;

27 (6) "Losses", direct incurred losses under covered policies in a calendar year,
28 excluding losses attributable to additional living expense coverages not to exceed forty
29 percent of the insured value of a residential structure or its contents, and excluding loss
30 adjustment expenses and fair rental value losses and business interruption losses;

31 (7) "Retention", the amount of losses below which an insurer is not entitled to
32 reimbursement from the fund. An insurer's retention shall be calculated as follows:

33 (a) The department of insurance, financial, and professional regulation shall
34 calculate and report to each insurer the retention multiples for that year. For the contract
35 year beginning January 1, 2008, the retention multiple shall be equal to two billion dollars
36 divided by the total estimated reimbursement premium for the contract year; for
37 subsequent years, the retention multiple shall be equal to two billion dollars, adjusted to
38 reflect the percentage growth in premium for covered policies since 2008, divided by the
39 total estimated reimbursement premium for the contract year;

40 (b) The retention multiple as determined under paragraph (a) of this subdivision
41 shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing
42 the ninety percent coverage level, the adjusted retention multiple is one hundred percent
43 of the amount determined under paragraph (a) of this subdivision. For insurers electing
44 the seventy-five percent coverage level, the retention multiple is one hundred twenty
45 percent of the amount determined under paragraph (a) of this subdivision. For insurers
46 electing the forty-five percent coverage level, the adjusted retention multiple is two
47 hundred percent of the amount determined under paragraph (a) of this subdivision;

48 (c) An insurer shall determine its provisional retention by multiplying its
49 provisional reimbursement premium by the applicable adjusted retention multiple and

50 shall determine its actual retention by multiplying its actual reimbursement premium by
51 the applicable adjusted retention multiple;

52 (d) To the extent the Missouri catastrophe fund collects federal backdrop or
53 reinsurance moneys designed to provide protection above the financial capacity of the fund
54 as provided in sections 379.955 to 379.969, the insurer elected coverage levels shall
55 automatically become one hundred percent.

379.957. 1. There is hereby created the "Missouri Catastrophe Fund" within the
2 state treasury to be administered by the director. Moneys in the fund may not be
3 expended, loaned, or appropriated except to pay obligations of the fund arising out of
4 reimbursement contracts entered into under section 379.959, payment of debts including
5 obligations arising out of revenue bonds issued under section 379.963, costs of the
6 mitigation program under section 379.965, costs of procuring reinsurance, and costs of
7 administration of the fund. The director shall invest the moneys in the fund under section
8 30.260, RSMo. Except as otherwise provided in sections 379.955 to 379.969, earnings from
9 all investments shall be retained in the fund. Notwithstanding the provisions of section
10 33.080, RSMo, to the contrary, moneys in the trust fund shall not revert to the credit of the
11 general revenue fund at the end of the biennium. The director may employ or contract
12 with such staff and professionals as it deems necessary for the administration of the fund.

13 2. The director shall promulgate such rules as are reasonable and necessary to
14 implement sections 379.955 to 379.969. The director is authorized to adopt those rules that
15 are reasonable and necessary to accomplish the limited duties specifically delegated within
16 sections 379.955 to 379.969. Any rule or portion of a rule, as that term is defined in section
17 536.010, RSMo, that is promulgated under the authority delegated in sections 379.955 to
18 379.969 shall become effective only if it has been promulgated under the provisions of
19 chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of
20 the powers vested with the general assembly under chapter 536, RSMo, to review, to delay
21 the effective date or to disapprove and annul a rule are subsequently held unconstitutional,
22 then the grant of rulemaking authority and any rule proposed or adopted after the
23 effective date of this section shall be invalid and void.

379.959. 1. The director shall enter into a contract with each insurer writing
2 covered policies in this state to provide to the insurer the reimbursement described in
3 subsection 2 of this section, in exchange for the reimbursement premium paid into the fund
4 under section 379.961. As a condition of doing business in this state, each such insurer
5 shall enter into such a contract.

6 2. The contract shall require the director to reimburse the insurer for forty-five
7 percent, seventy-five percent, or ninety percent of its losses from each covered event in

8 excess of the insurer's retention, plus ten percent of the reimbursed losses to cover loss
9 adjustment expenses.

10 3. The insurer shall elect one of the payment percentage coverage levels specified
11 in this section and may, upon renewal of a reimbursement contract:

12 (1) Elect a lower percentage coverage level; or

13 (2) Elect a higher percentage if it pays to the fund an actuarially appropriate
14 equalization charge as determined by the director.

15 4. All members of an insurer group must elect the same percentage coverage level.
16 The Missouri basic property insurance inspection and placement program under section
17 379.810 shall elect the ninety percent coverage level.

18 5. The contract shall provide that reimbursement amounts shall not be reduced by
19 reinsurance paid or payable to the insurer from other sources; however, recoveries from
20 such other sources, taken together with reimbursements under the contract, may not
21 exceed one hundred percent of the insurer's losses from covered events. If such recoveries
22 and reimbursements exceed one hundred percent of the insurer's losses from covered
23 events, and if there is no agreement between the insurer and the reinsurer to the contrary,
24 any amount in excess of one hundred percent of the insurer's losses shall be returned to the
25 fund.

26 6. The contract shall also provide that the obligation of the director with respect
27 to all contracts covering a particular year shall not exceed the balance of the fund, together
28 with the maximum amount that the director is able to raise through the issuance of revenue
29 bonds under section 379.963. The contract shall require the director to annually notify
30 insurers of the fund's anticipated borrowing capacity for the next year, the current balance
31 of the fund, and the insurer's estimated share of total reimbursement premium to be paid
32 to the fund. For all regulatory and reinsurance purposes, an insurer may calculate its
33 projected payout from the fund as its share of the total fund multiplied by the sum of the
34 current fund balance and the bonding capacity as reported under this subsection. In May
35 and October of each year, the director shall publish in the Missouri register a statement
36 of the fund's anticipated borrowing capacity and the current balance of the fund.

37 7. (1) The contract shall require the insurer to report the insurer's losses from
38 covered events for the year to the director on December thirty-first of each year, and
39 quarterly thereafter. The contract shall require the director to determine and pay, as soon
40 as practicable after receiving these reports, the initial amount of reimbursement due and
41 adjustments to this amount based on later loss information. The adjustments to
42 reimbursement amounts shall require the director to pay, or the insurer to return, amounts
43 reflecting the most recent calculation of losses.

44 (2) If the director determines that the projected year-end balance of the fund,
45 together with the amount that the director determines that it is possible to raise through
46 revenue bonds issued under section 379.963, are insufficient to pay reimbursement to all
47 insurers at the level promised in the contract, the director shall:

48 (a) Pay to each insurer the amount of reimbursement it is owed, up to an amount
49 equal to the projected payout determined under subsection 2 of this section; and

50 (b) Thereafter, establish the prorated reimbursement level at the highest level for
51 which any remaining fund balance or bond proceeds are sufficient.

52 8. The contract shall provide that if an insurer demonstrates to the director that
53 it is likely to qualify for reimbursement under the contract, and demonstrates to the
54 director that the immediate receipt of moneys is likely to prevent the insurer from
55 becoming insolvent, the director shall advance the insurer, at market interest rates, the
56 amounts necessary to maintain the solvency of the insurer, up to fifty percent of the
57 director's estimate of the reimbursement due the insurer. The insurer's reimbursement
58 shall be reduced by an amount equal to the amount of the loan and interest thereon.

59 9. The contract shall provide that in the event of the insolvency of an insurer, the
60 fund shall pay directly to the Missouri Property and Casualty Insurance Guaranty
61 Association, established under sections 375.771 to 375.779, RSMo, the net amount of
62 reimbursement moneys owed to the insurer. As used in this subsection, the term "net
63 amount of all reimbursement moneys" means that amount which remains after
64 reimbursement for preliminary or duplicate payments owed to private reinsurers or other
65 inuring reinsurance payments to private reinsurers that satisfy statutory or contractual
66 obligations of the insolvent insurer attributable to covered events to such reinsurers.
67 Private reinsurers shall be reimbursed or otherwise paid prior to payment to the Missouri
68 Insurance Property and Casualty Guaranty Association, notwithstanding any law to the
69 contrary. The Missouri Insurance Property and Casualty Guaranty Association shall pay
70 all claims up to the maximum amount permitted by sections 375.771 to 375.779, RSMo.
71 Thereafter, any remaining moneys shall be paid pro rata to claims not fully satisfied.

72 10. The director shall adopt the initial contract form no later than September 1,
73 2007, and shall adopt the initial premium formula no later than October 1, 2007. Initial
74 reimbursement contracts must be entered into no earlier than November 1, 2007, and no
75 later than December 15, 2007.

 379.961. 1. Each reimbursement contract shall require the insurer to annually pay
2 to the fund an actuarially indicated premium for the reimbursement promised.

3 2. The director shall select an independent consultant to develop a formula for
4 determining the actuarially indicated premium to be paid to the fund. The formula shall

5 specify, for each zip code or other limited geographical area, the amount of premium to be
6 paid by an insurer for each one thousand dollars of insured value under covered policies
7 in that zip code or other area. In establishing premiums, the director shall consider the
8 coverage elected under subsection 2 of section 379.959 and any factors that tend to enhance
9 the actuarial sophistication of ratemaking for the fund, including deductibles, type of
10 construction, type of coverage provided, relative concentration of risks, and other such
11 factors deemed by the director to be appropriate. The director may, at any time, revise the
12 formula under the procedure provided in this subsection.

13 3. No later than September first of each year, each insurer shall notify the director
14 of its insured values under covered policies by zip code, as of June thirtieth of that year.
15 On the basis of these reports, the director shall calculate the premium due from the
16 insurer, based on the formula adopted under subsection 2 of this section. The insurer shall
17 pay the required annual premium under a periodic payment plan specified in the contract.
18 The director shall provide for payment of reimbursement premium in periodic installments
19 and for the adjustment of provisional premium installments collected prior to submission
20 of the exposure report to reflect data in the exposure report.

21 4. All premiums paid to the fund under reimbursement contracts shall be treated
22 as premium for approved reinsurance for all accounting and regulatory purposes.

23 5. In order to provide startup moneys for the administration of the fund, each
24 insurer subject to sections 379.955 to 379.969 shall pay to the fund an advance premium
25 of one thousand dollars no later than January 1, 2007. The insurer shall receive a credit
26 against future premiums for the advance payment.

379.963. 1. Upon the occurrence of a covered event and a determination that the
2 moneys in the fund are or will be insufficient to pay reimbursement at the levels promised
3 in the reimbursement contracts, the director may take the necessary steps for the issuance
4 of revenue bonds for the benefit of the fund. The terms of the bond may not exceed thirty
5 years. The proceeds of such revenue bonds may be used to make reimbursement payments
6 under reimbursement contracts; to pay interest on bonds; to fund reserves for the bonds;
7 to pay expenses incident to the issuance or sale of such bonds; or for other purposes related
8 to the financial obligations of the fund as the director may determine.

9 2. If the director determines that the amount of revenue produced under section
10 379.961 is insufficient to fund revenue bonds to pay reimbursement at the levels promised
11 in the reimbursement contracts, the director shall levy an emergency assessment on each
12 insurer writing property and casualty business in this state. The assessment shall be
13 specified as a percentage of future premium collections and is subject to annual
14 adjustments by the director to reflect changes in premiums subject to assessments collected

15 under this subsection in order to meet debt obligations. The same percentage shall apply
16 to all policies in lines of business subject to the assessment issued or renewed during the
17 twelve-month period beginning on the effective date of the assessment. A premium is not
18 subject to an annual assessment under this subsection in excess of six percent of premium
19 with respect to obligations arising out of losses attributable to any one contract year, and
20 a premium is not subject to an aggregate annual assessment under this subsection in excess
21 of ten percent of premium. An annual assessment under this subsection shall continue
22 until the bonds issued with respect to which the assessment was imposed are outstanding,
23 including any bonds the proceeds of which were used to refund the bonds, unless adequate
24 provision has been made for the payment of the bonds under the documents authorizing
25 issuance of the bonds. With respect to each insurer collecting premiums that are subject
26 to the assessment, the insurer shall collect the assessment at the same time as it collects the
27 premium payment for each policy and shall remit the assessment collected to the fund or
28 authority as provided in the order issued by the director. The director shall verify the
29 accurate and timely collection and remittance of emergency assessments and shall maintain
30 reports and report his findings to the director. Each insurer collecting assessments shall
31 provide the information with respect to premiums and collections as may be required by
32 the director of the department of insurance, financial and professional regulation to enable
33 the director to monitor and verify compliance with this subsection.

379.965. 1. The director may procure reinsurance from reinsurers for the purpose
2 of maximizing the capacity of the fund.

3 2. In each fiscal year in which there are no outstanding obligations of the fund, the
4 general assembly may appropriate from the investment income of the Missouri catastrophe
5 fund an amount no less than ten percent and not more than thirty-five percent of the
6 investment income from the prior fiscal year for the purpose of providing funding for local
7 governments, state agencies, public and private educational institutions, and nonprofit
8 organizations to support programs intended to improve catastrophe preparedness, reduce
9 potential losses in the event of a covered event, provide research into means to reduce such
10 losses, educate or inform the public as to means to reduce covered losses, assist the public
11 in determining the appropriateness of particular upgrades to structures or in the financing
12 of such upgrades, or protect local infrastructure from potential damage from a covered
13 loss. Moneys shall first be available for appropriation under this subsection in fiscal year
14 2010. Moneys in excess of the ten percent specified in this subsection shall not be available
15 for appropriation under this subsection if the director finds that an appropriation of
16 investment income from the fund would jeopardize the actuarial soundness of the fund.

17 **3. The director may allow insurers to comply with reporting requirements and**
18 **reporting format requirements by using alternative methods of reporting if the proper**
19 **administration of the fund is not thereby impaired and if the alternative methods produce**
20 **data which are consistent with the purposes of sections 379.955 to 379.969.**

21 **4. In order to assure the equitable operation of the fund, the director may impose**
22 **a reasonable fee on an insurer to recover costs involved in reprocessing inaccurate,**
23 **incomplete, or untimely exposure data submitted by the insurer.**

379.967. 1. There is established in the department of insurance, financial and
2 **professional regulation, the "Missouri Catastrophe Fund Advisory Council". The advisory**
3 **council shall consist of thirteen members, appointed by the governor with the advice and**
4 **consent of the senate.**

5 **2. Each of these members shall be appointed for a term of three years, except that,**
6 **of the members first appointed, four shall serve for terms of one year, four shall serve for**
7 **terms of two years and five shall serve for terms of three years. Of these members, one**
8 **shall be an actuary, one shall be a meteorologist, one shall be an engineer, one shall be a**
9 **representative of insurers, one shall be a representative of insurance producers, one shall**
10 **be a representative of reinsurers, one shall be a consumer representative, one shall be a**
11 **representative of organized labor, one shall be a representative of law enforcement, one**
12 **shall be a representative of firefighters, one shall be a seismologist, one shall be a**
13 **representative of the state emergency management agency, and one shall be a member of**
14 **the public at large. A majority of the membership of the council shall constitute a quorum**
15 **for the transaction of council business. Action may be taken and motions and resolutions**
16 **adopted by the council at any meeting thereof by the affirmative vote of a majority of the**
17 **full membership of the council. The council shall meet regularly as it may determine, and**
18 **shall also meet at the call of the director. The council shall appoint a chairperson from**
19 **among its members and such other officers as may be necessary. In addition to providing**
20 **the director with information and advice in connection with his duties with respect to the**
21 **fund generally, the council shall be specifically charged with developing prevention and**
22 **mitigation standards that prevent or significantly reduce the potential damage from the**
23 **natural or manmade covered loss. Members of the advisory council shall serve without**
24 **compensation for their services, but shall be paid any necessary expenses incurred in**
25 **attending meetings of the council or committee thereof or in the performance of other**
26 **duties authorized by the council.**

379.969. Upon the creation of a federal or multistate catastrophic insurance or
2 **reinsurance program intended to serve purposes similar to the purposes of the fund**
3 **created by section 379.957, the director shall promptly make recommendations to the**

4 **general assembly for coordination with the federal or multistate program, for termination**
5 **of the fund, or for such other actions as the director finds appropriate in the**
6 **circumstances.**

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